



National Association of Federal Credit Unions

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October 7, 2005

Jennifer J. Johnson
Secretary of the Board
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket No. R-1234

Dear Ms. Johnson:

I am writing on behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions, in response to the Board of Governors of the Federal Reserve System's (Board) request for comment on its proposal to amend Regulation E, which implements the Electronic Funds Transfer Act, and the official staff commentary to the regulation. The proposal would clarify the disclosure obligations of the automated teller machine (ATM) operators with respect to fees imposed on a consumer for initiating an electronic fund transfer or a balance inquiry at an ATM. NAFCU welcomes and supports the Board's proposal.

Proposed Rule

Currently, § 205.16 of Regulation E requires an ATM operator that imposes a fee on a consumer for initiating an electronic funds transfer (EFT) or a balance inquiry to provide a notice that a fee will be imposed and the amount of the fee. The notice must be posted in a prominent and conspicuous location at or on the ATM; and, the ATM operator must provide the notice either on the screen of the ATM or on paper, before the consumer is committed to paying the fee.

The language of the notice that states that a fee *will* be imposed has caused concerns that a consumer may be confused if a fee is not imposed on all consumers or on all transactions. In response, the Board has proposed that the regulation and the official

staff commentary be amended to permit the use of the term *may* instead of *will* in situations where a fee is not imposed in all cases. The commentary would clarify that ATM operators that impose a fee in all cases would be required to provide notice on the ATM signage that a fee *will* be imposed.

NAFCU believes that the current regulation mandating the use of the term *will* in all cases, whether or not an ATM operator imposes a fee, is overly restrictive and likely to cause confusion in consumers. If signage posted on an ATM states that a fee will be charged even though certain transactions or consumers (due to network agreements) are surcharge-free, the consumer may not attempt a transaction thinking that there will be a surcharge. In a case where the transaction would be surcharge-free, either because of the nature of the transaction or the ATM operator and the consumer's financial institution participate in the same network, the consumer is confused by the signage and suffers an inconvenience. For this reason, NAFCU supports the Board's proposed revisions as they will increase transparency and facilitate consumer access to financial services.

Requested Information

The Board also has requested information about ATM operators' surcharge practices. The following paragraphs provide information in response to those requests:

Under what circumstances might an ATM operator not impose a surcharge for providing electronic transfer services or responding to balance inquiries?

While the exact number is unknown, many credit unions do not impose surcharges for any EFT services. In those cases where credit union ATM operators do impose surcharges, they typically exempt transactions made by consumers whose home institutions participate in surcharge free networks. Many credit unions have entered into agreements with other credit unions to offer surcharge-free services. Some credit unions also exempt certain types of cards from surcharge fees, such as FEMA-issued cards, Red Cross-issued cards, and ATM's in areas hit hardest by Hurricane Katrina.

What adverse impact on consumers, if any, might result from a disclosure that states that an ATM surcharge will be imposed when the operator's practice is not to impose a surcharge on certain consumers?

The conflicting disclosure may result in consumer confusion and the decision not to attempt a transaction even though no fee may be imposed. This results in an inconvenience to the consumer and a loss of access to financial services.

What adverse impact on consumers who are charged an ATM fee, if any, might result if ATM signage states that a fee may be imposed?

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None, as the consumer has received advance notice that a fee might be imposed as a result of the transaction. Furthermore, the consumer, as required by regulation, has the opportunity to end the transaction before incurring the fee.

What were the disclosure practices of ATM operators at the time the Gramm-Leach-Bliley (GLB) Act was passed?

Disclosure practices were not standard among credit unions prior to the passage of the GLB Act. Some credit unions disclosed at the ATM that they did not impose surcharges, while others indicated at the ATM that they only imposed surcharges on non-members and for certain transactions. Also, some credit unions notified members that certain transactions would incur a surcharge in the account agreement.

NAFCU would like to thank you for this opportunity to share its views on this proposed rule. Should you have any questions or require additional information, please call me or Bill Hall, NAFCU's Associate Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 266.

Sincerely,

A handwritten signature in cursive script, reading "Fred R. Becker, Jr.", followed by a vertical line.

Fred R. Becker, Jr.
President/CEO

FRB/whh